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OFFICE OF PETITIONS

Attorney Docket No. 2013-3-06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:

Myoung Jun Lee

Serial No: 10/034,177

Filed: December 28, 2001

For: THERMO-SENSITIVE HEATER
AND HEATER DRIVING CIRCUIT

Patent No.: 6,756,572

Issued: June 29, 2004

Conf. No.: 1566

2011 FEB -8 PM 4:40
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FEB 07 2011**PETITION FOR RECONSIDERATION OF DISMISSAL DECISION REFUSING TO
ACCEPT DELAYED PAYMENT OF MAINTENANCE FEE UNDER 37 CFR 1.378(E)**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is in response to the Dismissal Decision on Petition under 37 CFR 1.378(b) dated December 7, 2010, in connection with the above-identified application. The response is due February 7, 2011. This petition is accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17. Please charge any fees and credit any overpayment to our deposit account No. 502290. Please consider the following remarks:

02/10/2011 DALLIN 00000016 502290 6756572
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REMARKS

This is a Petition under 37 CFR § 1.378(e) requesting reconsideration of the Dismissal of Petition to Accept Delayed Payment of Maintenance Fee mailed December 7, 2010 (the "Dismissal Decision") in the above-identified U.S. Patent 6,756,572 (the "'572 Patent").

Reconsideration is timely requested in light of the additional statements and showings presented with the renewed Petition. It is respectfully submitted that the original showings, coupled with the additional evidence and arguments advanced with this Petition, demonstrate that all of the components of a grantable petition as set forth in 37 CFR § 1.378(b) have been shown in that: (1) the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely; (2) that the petition was filed promptly after the patentee became aware of the expiration of the patent; and (3) there were steps taken to ensure timely payment of the maintenance fee.

Additional evidence is presented with the instant Petition to respond to each of the suggestions made by the Petition's Attorney, Douglas I. Wood. In the event that the instant Petition has failed to satisfactorily address each of the issues identified by Mr. Wood so as to result in having the Petition granted, Petitioner requests that a phone call be made to the undersigned and an opportunity be provided to supplement this Petition.

Petitioner further notes that several items of evidence submitted herein have been redacted to preserve personal and/or confidential subject matter. The undersigned submits that the redacted information is believed to not have any bearing or relevance as to the reason for which the document is being submitted.

Showing of unavoidable delay

A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the Petitioner became aware of the expiration of the patent is set forth below and in the attached declarations in support of this petition.

Page 4 of the Dismissal Decision referred to the three periods to be considered during the evaluation of a petition of 37 CFR 1.378 (b), which are:

- (1) The delay in reply that originally resulted in expiration;

- (2) The delay in filing an initial petition pursuant to § 1.378 (b) to revive the application;
and
- (3) The delay in filing a grantable petition pursuant to § 1.378 (b) to revive the application.

The Dismissal Decision indicated that the original Petition lacked the showing required by time periods (1) and (2). In the instant Petition, Petitioner will now address each of these time periods.

(1) The delay in reply that originally resulted in expiration

With regard to time period (1), the Dismissal Decision states, on page 4, that the Petitioner has not shown that the delay that originally resulted in the expiration of the patent was unavoidable. The Dismissal Decision further addressed the need of adequate showing for delay involving employee error, such that:

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

(1) (A) Administrative error was the cause of the delay

Regarding time period (1), which relates to the delay in payment of the maintenance fee in the '572 patent, an administrative error occurred with regard to the actions of employee Linda Chung. Ms. Chung was an employee of the Firm from December 2003 to February 2011. From 2004-2006, Ms. Chung's position was that of a patent secretary having the duties that included filing applications and other prosecution related papers with the USPTO, docketing due

dates, drafting client correspondence, and providing general secretarial support to several attorneys.

The '572 patent issued on June 29, 2004. The issuance of the patent was reported to the patent owner on August 20, 2004. (Petition Exhibit 2). The reporting letter (the "Letter to Client") was sent to the patent owner along with the ribbon copy of the issued patent. (See reporting letter of Petition Exhibit 1, pgs. 1-2).

As explained in the original petition, the Letter to Client indicated that the '572 patent had maintenance fees due 3, 7, and 11 years after the issuance of the patent. The Letter to Client further explained that the Firm was not responsible for the non-payment of the maintenance fees and included the recommendation that the patent owner docket the dates for payment of the maintenance fees. *Id.* Maintenance fee due dates for the '572 patent were not docketed by the Firm as it was believed that the patent owner would tend to the docketing of these maintenance fees. (Kim Dec. para. 4).

The error relates to the misunderstanding as to the party who is to track the maintenance fee due dates. On the one hand, the Letter to Client recommended that the patent owner docket the due dates for the maintenance fee. On the other hand, the patent owner was under the belief that the Firm was tracking these due dates. The error therefore rests at least in part with the ambiguity in the Client Letter sent by Ms. Chung. This ambiguity represents an administrative oversight which led to the failure of the maintenance fees to be tracked (by either party), which led to the maintenance fees not being timely paid. Thus, the noted error resulted in the delay in timely payment of the subject maintenance fees of the '572 patent.

Regarding case law on this subject, Petitioner is aware of the axiom in which certain types of breakdowns in communication regarding the payment of maintenance fees is not considered to be grounds for granting a petition for late payment of a maintenance fee under the unavoidable standard. *See, e.g., Ray v. Lehman*, 55 F.3d 606, 609 (Fed. Cir. 1995). However, the instant matter is distinguishable from that case since in *Ray*, the "miscommunication" was actually a non-communication since the legal representative was not able to send the subject letter to the client. *Id.* at 607. In the instant matter, there was no such breakdown in communication since the patent owner did receive the Client Letter providing the due dates at issue. The issue here is not whether the patent owner received a communication (as in *Ray*), but

what was the content or impression that was conveyed to the patent owner. Accordingly, Petitioner submits that the holding in *Ray* is inapplicable to the instant matter.

(1) (B) Business routine

During the time period in question, the Firm had in place a business routine to perform payment of the maintenance fees for issued patents, including the '572 (which had the extended due date of June 29, 2008). More specifically, during the time period between 2004 and October 2006, the procedure in place to ensure timely payment of maintenance fees of the subject '572 patent was to report the requirement for maintenance fee payment to the patent owner. This procedure had the further step in which when the patent owner specifically makes a request for payment of the maintenance fee, the Firm would tend to the payment of the maintenance fees upon receiving such direction.

This business routine, which was in place prior to January 2009, is further described by Ms. Kim in her declaration. In particular, Ms. Kim elaborated that the Firm had a business routine for docketing and paying maintenance fees of patents that included reporting to the patent owner that maintenance fee payments for an issued patent were necessary. (Kim Dec. para. 4). Ms. Kim reiterated the point that as the maintenance fees become due, if the Firm received specific direction from the patent owner, payment of the maintenance fees would therefore be timely paid. *Id.* Ms. Kim added that after around January 2009, the Firm had the business routine of docketing maintenance fees of issued patents. (Kim Dec. para. 5).

(1) (C) Employee was sufficiently trained

Recall that Ms. Chung held the position of patent secretary from 2004-2006. Although Ms. Chung did not have significant prior experience as a patent secretary and docketing patent matters, she did receive initial and ongoing training by supervising attorneys and by the Office Manager Michelle Park. (Park Dec. para. 3). Ms. Chung's duties as patent secretary included filing applications and other prosecution related papers with the USPTO, docketing due dates, drafting client correspondence, and providing general secretarial support to several attorneys. (Park Dec. para. 3). To assure proper execution of assigned tasks, Ms. Chung was directly supervised by attorneys with whom she worked, and these attorneys reviewed her work product (e.g., PTO filings, client letters, etc.) to assure proper execution of her assigned tasks. (Park Dec.

para. 3). Petitioner therefore submits that Ms. Chung was sufficiently trained and experienced with regard to the function of tending to the reporting of issued patents, providing letters indicating due dates, and tending to client requests to pay maintenance fees.

If the above discussed error did not occur, the maintenance fees for the '572 patent would have been docketed and timely paid, and thus, the failure to pay the maintenance fee and submit the noted petition was unavoidable.

(2) The delay in filing initial petition

Petitioner will now consider time period (2), which relates to the delay in filing an initial petition pursuant to § 1.378(b) to revive the patent. With regard to time period (2), the Dismissal Decision requested additional information relating to the docketing error (failure to enter the due date for filing the petition under 37 CFR 1.378(c) and pay the required maintenance fee) made by IP Docketing Manager Emily Baldwin. (Dismissal Decision, pg. 5). The Dismissal Decision further addressed the need of adequate showing (as noted above in Section (1)) for delay involving the docketing error. The requested showing for this time period (2) is presented below.

(2) (A) Docketing error was the cause of the delay

Regarding time period (2), the delay relates to the delay in filing an initial petition pursuant to § 1.378(b) to revive the patent, and a docketing error that occurred with regard to docketing the due date for such a petition.

In this regard, on December 11, 2009, Harry Lee, who is a Patent Agent of the Firm, became aware of the expiration of the '572 patent while reviewing the patent status report of the patentee prepared by docketing manager, Emily Baldwin. (Lee Dec. para. 3). In an email dated November 18, 2009 (Lee Exhibit 1, pgs. 1-2), a list of active patent and trademark cases prepared by Ms. Baldwin was sent to the patentee. It is noted that the above-identified patent was not listed in the list because the list included only active or pending cases.

Subsequently, on December 11, 2009, Mr. Lee instructed Ms. Baldwin to inform the patentee of the expired '572 patent and to include all abandoned and expired cases in the list as shown in the attached two emails dated December 11, 2009 (Lee Dec. para. 4; Lee Exhibit 2, pgs. 1-2).

Mr. Lee phoned the patent owner on December 17, 2009, and discussed that the '572 patent was expired. (Lee Dec. para. 4). At the patent owner's request, Ms. Baldwin sent an email (Lee Exhibit 3, pgs. 1-3) to the patentee along with a pre-bill, advising of the due date of June 29, 2010 for submitting the maintenance fee with a petition. Specifically, the email was sent to Mr. Bob Joo and Mr. Sean Lee, vice president of Orion Electronics, Inc., who is a son of the patentee and acts as a representative of the patentee. The email was also cc'd to undersigned Mr. Lee and the Firm's representative email address "patent@lhlaw.com" used for communication involving patent matters. (Lee Dec. para. 5). However, it is noted that the email was not cc'd to a secretary of Mr. Lee while all emails regarding matters assigned to him are usually cc'd to his secretary so that any due date indicated in the email may be calendared by the secretary in the Outlook calendar which is accessible by all members of the Firm. *Id.*

It is Mr. Lee's belief that Ms. Baldwin was fully aware of the due date for filing a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent, and that the patent owner verbally indicated that he wished to pay the maintenance fee. (Lee Dec. para. 6). Therefore, according to the patentee's intention to pay the maintenance fee, Ms. Baldwin was expected to enter the due date into the Firm's docketing system, IPMaster, even before the pre-bill was paid. *Id.* In other words, it is the IP docketing manager's responsibility to enter all due dates into the IP docketing system. *Id.* Unfortunately, as discussed above, the due date was never entered into the docketing system, and it is believed that this incident was clearly due to an error which eventually caused the delay at issue.

If the above discussed docketing error was not made by Ms. Baldwin, the expired '572 patent could have been reinstated as desired by the patentee. In this regard, it is clear that the Petitioner exercised the due care of a reasonably prudent person, and thus, the failure to pay the maintenance fee and submit the noted petition was unavoidable.

(2) (B) Business routine

During the time period in question, the Firm had in place a business routine to perform payment of the maintenance fees for issued patents, including the '572 (which had the extended due date of June 29, 2008). More specifically, in December 2009, Ms. Jane Kim continued working as an IP docketing assistant with Ms. Baldwin and she also entered data into IPMaster, oftentimes confirming data entered by Ms. Baldwin. (Lee Dec. para. 7). Since Ms. Kim joined the Firm in 2007, the IP docketing department had two people working in parallel so that data entry can be cross-checked. *Id.* For example, when communications are received from the USPTO, due dates are first entered into the docketing system by the IP docketing manager, and then the IP docketing manager's assistant confirms the data entry when reporting the communications to applicants/clients. *Id.* However, this case was exceptional in that there was no official communication to report. Therefore, data entry for the instant '572 patent was entirely dependent on the IP docketing manager. *Id.*

Further with regard to business routine of docketing maintenance fee due dates, Mr. Lee has indicated that he also calendars important due dates independently as necessary by marking emails in the Microsoft Outlook with the due dates. (Lee Dec. para. 8). However, Mr. Lee did not mark the email sent to the patentee on December 17, 2009, believing that it would be entered to the docketing system by the docketing manager. *Id.* Further, as discussed above, Mr. Lee's secretary also keeps her own calendar, but she was unable to calendar the due date for the expired patent because the reminder email was not sent to her. *Id.* See other due dates listed for June 29, 2010 in the Outlook calendar managed by secretaries (Lee Exhibit 4, pg. 1). Therefore, a business routine for performing the docketing function that could reasonably be relied upon to avoid errors was in place at the time the above-identified docketing error occurred. Despite the fact that the Firm had a system that could prevent the failure to file a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent, the above discussed errors resulted in the failure to docket the due date, thus resulting in the failure to file the requisite Petition.

Indeed, if Ms. Baldwin had entered the due date of June 29, 2010 for paying the first maintenance fee with a petition to accept unintentionally delayed payment of maintenance fee into the docketing system, as expected, the daily due date reminder for June 29, 2010 would have listed the expired patent. (Lee Dec. para. 10). However, unfortunately, since the due date was

never entered by Ms. Baldwin, no reminder came up with regard to the expired patent, as shown in the daily due date reminder circulated to IP attorneys and secretaries via email on June 29, 2010 (Lee Exhibit 5, pg. 1).

(2) (C) Employee was sufficiently trained

Ms. Baldwin worked for the Firm from July 2009 to March 2010 and held the position of IP Docketing Manager. (Park Dec. para. 4). Ms. Baldwin had over six years of prior experience in IP prosecution/operations including the filing and docketing of patent matters. *Id.* Upon joining the firm, Ms. Baldwin was trained on the Firm's procedures for docketing patent matters and use of the Firm's docketing software IP Master. *Id.* Ongoing training was provided by Patent Attorney Richard Salfelder and Patent Agent Harry Lee. (*Id.*; See also Lee Dec. para. 9). Ms. Baldwin's duties as IP Docketing Manager included docketing due dates of incoming communications from the USPTO, docketing due dates on new applications and other items (e.g., IDSs, payment of maintenance fees, examiner interview dates, etc.), and provided daily and bi-monthly docketing status reports that are distributed to attorneys and staff. (Park Dec. para. 4).

Ongoing checks of Ms. Baldwin's work product occurred when Ms. Baldwin would issue daily docketing reports. (Park Exhibit 1). The assigned attorneys use these daily docketing reports for, among other things, verifying that the Firm's docket has correct information and due dates. This verification serves to assure that Ms. Baldwin was properly performing her duties.

Petitioner therefore submits that Ms. Baldwin was sufficiently trained and experienced with regard to the function of tending to the docketing of due dates, such as those relating to the payment of maintenance fees and filing associated petitions.

Emily Baldwin and Linda Chung are unavailable

Page 5 of the Dismissal Decision states that an adequate showing requires statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them. Page 6 of the Dismissal Decision further states that specifically, statements must be provided by Emily Baldwin, the person asserted to have made the error leading to the delay in filing the maintenance fee and initial petition to accept the unintentionally delayed maintenance fee.

Ms. Baldwin left the Firm as of March 5, 2010. As required by the Office of Petitions, Mr. Lee tried to contact Ms. Baldwin to obtain her statement, using available information (Lee Exhibit 6, pgs. 1-4) provided by her before she left the Firm. In particular, Mr. Lee tried emailing and calling MS. Baldwin unsuccessfully on January 11, 2011. (Lee Dec. para. 11). Ms. Baldwin's email was not deliverable to the provided email address and her phone number was out of service. *Id.* Further, a letter was sent to her home address on January 13, 2011, but no reply was received from Ms. Baldwin as of today. *Id.* Therefore, despite the above-mentioned efforts, Ms. Baldwin has not been reachable to obtain the required statement.

Ms. Chung is likewise unavailable to provide a declaration relating to various events occurring in 2004 and the docketing of the initial maintenance fee due date. According to Mr. Lee, on Friday February 4, 2011, he spoke with Ms. Chung who advised that she would be present at the Firm to sign the declaration. (Lee Dec. para. 12). However, Ms. Chung never arrived as she indicated. *Id.* Mr. Lee called Ms. Chung throughout the day on February 7, 2011, but Ms. Chung did not answer her phone nor did she return any voice messages. *Id.* Thus, Ms. Chung is unavailable at the time of filing of the instant Petition to sign a declaration.

In view of the above statements, attached declaration and evidence, the Patent Office is respectfully requested to accept delayed payment of the maintenance fee in the above identified expired patent. If for any reason the Patent Office finds the petition other than in condition for grant and the maintenance fee cannot be accepted, the Patent Office is requested to call the undersigned at the Los Angeles, California, telephone number (213) 622-2221 to discuss the steps necessary for placing the petition in condition for grant.

Customer No. 035884

Date: February 7, 2011

Respectfully submitted,

Lee, Hong, Degerman, Kang & Waimey

/Jeffrey Lotspeich/

Jeffrey J. Lotspeich
Registration No. 45,737
Attorney for Petitioner

Attachments: Petition Exhibits 1 and 2

Declaration by Harry Lee

Exhibits supporting Dec. by Harry Lee

Declaration by Michelle Park

Exhibits supporting Dec. by Michelle Park

Declaration by Jane Kim

Exhibits supporting Dec. by Jane Kim

THE LAW FIRM OF
LEE, HONG, DEGERMAN, KANG & SCHMADEKA

A PROFESSIONAL CORPORATION

801 SOUTH FIGUEROA STREET
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DAVID C. DEGERMAN
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ANDREW B. LEE
JOHN B. LEE
LEW E. V. MACAPAGAL
RICHARD C. SALTZBERG
LARRY R. SCHMADEKA
AMIT S. SHETH
MARC W. VITOLD
OF COUNSEL

August 20, 2004

Mr. Myoung Jun Lee

Re: U.S. Patent Application for:
THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT
Serial No.: 10/034,177
Filing Date: December 28, 2001
Our Ref. No.: 2013-3-06

Dear Mr. Lee:

We are pleased to enclose the ribbon copy of United States Letters Patent No. 6756,572 B2, issued on June 29, 2004. This document is the only one of its kind that will ever exist and should be kept in a safe place, such as a fireproof vault. We also include five (5) soft copies.

You may now begin to mark the products with the word "Patent" (or "Pat.") followed by the patent number. We encourage you to do so since failure to mark may jeopardize your right to recover damages from an infringer. It will not, however, invalidate the patent.

The patent will expire twenty years after the patent application was filed. However, during the course of the term, maintenance fees will be due and payable after the 3rd, 7th and 11th year. No maintenance fees will be required for the design patent.

We will endeavor to remind you of upcoming due dates. However, please appreciate that, due to the long time-frame involved, we can not be responsible for the non-payment of maintenance fees or for the non-notification of maintenance fee due dates. Accordingly, we strongly recommend that these due dates be docketed by your office and/or the patent owner as appropriate to asset the attached patents represents.

Petition

Exhibit 1, pg. 1

THE LAW FIRM OF

LEE, HONG, DEGERMAN, KANG & SCHMADEKA

Mr. Myoung Jun Lee

August 20, 2004

Page 2 of 2

Please appreciate that the patent has not been proofread to check for printing errors. However, should you desire this service to be performed, we will be happy to do it at an additional charge.

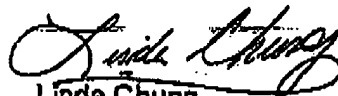
Although the patent has now issued and the claims are fixed, we may have the ability to change the claims. For example, future improvements to the invention may have caused it to evolve to such an extent that the patent no longer adequately protects the current commercial embodiment of the invention or what a potential infringer is doing. It is sometimes possible to have the patent reissued in a form which better protects the current embodiment of the invention.

An application to reissue a U.S. patent, in order to broaden the scope of claim coverage, must be filed within 2 years after the original issue date. We advise that you periodically review the protection afforded by the claims of this patent to determine whether a reissue application should be considered. Reissue may be sought on the basis that, due to an inadvertent error made without deceptive intent, the patent claimed more or less than the patentee had a right to claim as new.

The preparation of a reissue application can be complex, time consuming, and expensive. Upon application for reissue, the original patent must be surrendered to the Patent Office. The patentability of all of the claims is reconsidered by the Patent Office, just as in the case of the original patent application. A decision to seek reissue of a patent should not be made lightly. In any event, the 2-year deadline for a broadening reissue application is not extendable. If reissue is contemplated, we must have your instructions at least 4 months before the deadline (that is, at least 4 months before the second anniversary of the patent issue date).

Should you have any questions, please do not hesitate to call.

Very truly yours,



Linda Chung
Patent Secretary

LC
Enclosures

Petition
Exhibit 1, pg. 2

REORDER 9130425/1-1B QTY 300
Process and Track your shipment online: <http://www.dhl-usa.com>
1-800-CALL-DHL (toll free only)

1. Shipper's Details
 Order account number and approved rating: **798 8804 806**
 Change to ☐ Shipper ☐ Receiver ☐ 3rd Party ☐ Other ☐ Other
 Payment Method: ☐ Bill Payment (After Payment) ☐ Credit Card
☐ Yes Declared Value for Customs (in US \$) ☐ No
 Declaration Value (After Payment)

2. Shipper's Details
 Shipper's Account Number: **915462371**
 Shipper's Reference (up to 35 characters): **2013-3-06**
 Company Name: **LEE HONG DEGERMAN KANG &**
 Address: **SCHNADERA LAW FIRM**
801 S FIGUEROA ST FL 14
LOS ANGELES CA
 Post/ZIP Code (required): **900172573** Phone, Fax, or Email (required): **(213) 623-2221**

3. To/Receiver
 Contact Name: **Mr. Myung Jun Lee**
 Delivery Address (not Company Name or PO Box): **[REDACTED]**
 Country: **[REDACTED]**
 Phone, Fax, or Email (required): **[REDACTED]**

4. Shipment Details
 Total number of Packages: **1** Dimensions (in inches) Length: **11** Width: **11** Height: **11**
 Total weight (in lbs): **11** (in kg): **5**
 Package type: ☐ Box ☐ Envelope ☐ Tube ☐ Parcel ☐ Mailbox ☐ Other

5. Full Description of Contents
 One Content and Quantity: **Letter & Orig Por.**

6. Declaration of Contents
 I declare the contents of this shipment are as follows:
☐ Valuable (e.g., jewelry, watches, cameras, etc.)
☐ Fragile (e.g., glass, ceramics, etc.)
☐ Perishable (e.g., food, flowers, etc.)
☐ Hazardous (e.g., flammable, explosive, etc.)
☐ Other (specify): **[REDACTED]**

7. Shipping & Insurance
 Insurance: ☐ Yes ☐ No
 Insured Value (in US \$): **[REDACTED]**
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8. Shipping & Insurance
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55. Shipping & Insurance
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 Date: **2/21/04**

56. Shipping & Insurance
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71. Shipping & Insurance
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80. Shipping & Insurance
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81. Shipping & Insurance
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91. Shipping & Insurance
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92. Shipping & Insurance
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93. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

94. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

95. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

96. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

97. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

98. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

99. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

100. Shipping & Insurance
 Signature (required): **[REDACTED]**
 Date: **2/21/04**

Petition
Exhibit 2

RECEIVED
CENTRAL FAX CENTER
FEB 07 2011

Attorney Docket No. 2013-3-06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:

Myoung Jun Lee

Serial No: 10/034,177

Filed: December 28, 2001

For: THERMO-SENSITIVE HEATER
AND HEATER DRIVING CIRCUIT

Patent No.: 6,756,572

Issued: June 29, 2004

Conf. No.: 1566

**DECLARATION BY HARRY LEE IN SUPPORT OF PETITION FOR
RECONSIDERATION OF DECISION REFUSING TO ACCEPT DELAYED PAYMENT
OF MAINTENANCE FEE UNDER 37 CFR 1.378(E)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I declare that:

1. I am submitting this statement in support of a petition under 37 CFR 1.378(e) for reconsideration of decision refusing to accept delayed payment of maintenance fee.
2. I have been an employee of LEE, HONG, DEGERMAN, KANG & WAIMEY ("the Firm") from July 2007 to the present. I have held the position of Patent Agent since 2007.
3. On December 11, 2009, I became aware of the expiration of the patent while reviewing the patent status report of the patentee prepared by docketing manager, Emily Baldwin who joined the Firm after Mr. Alvarado left the Firm in July 2009. As shown in the attached email dated November 18, 2009 (Lee Exhibit 1, pgs. 1-2), a list of active patent and trademark cases prepared by Ms. Baldwin was sent to the patentee. It is noted that the above-identified patent was not listed in the list because the list included only active or pending cases.
4. Subsequently, on December 11, 2009, I instructed Ms. Baldwin to inform the patentee of the expired patent and to include all abandoned and expired cases in the list as shown

in the attached two emails dated December 11, 2009 (Lee Exhibit 2, pgs. 1-2). It is noted that the expired patent was discussed between Ms. Baldwin and I, but no other person was included in the communication.

5. I also discussed the expired patent with the patentee on the phone, and per the patentee's request, on December 17, 2009, Ms. Baldwin sent an email (Lee Exhibit 3, pgs. 1-3) to the patentee along with a pre-bill, advising of the due date of June 29, 2010 for submitting the maintenance fee with a petition. Specifically, the email was sent to Mr. Bob Joo and Mr. Sean Lee, vice president of Orion Electronics, Inc., who is a son of the patentee and acts as a representative of the patentee. The email was also cc'd to undersigned agent and the Firm's representative email address "patent@lhlaw.com" used for communication involving patent matters. However, it is noted that the email was not cc'd to a secretary of undersigned agent while all emails regarding matters assigned to undersigned agent are usually cc'd to the undersigned agent's secretary so that any due date indicated in the email may be calendared by the secretary in the Outlook calendar which is accessible by all members of the Firm.

6. As discussed above, Ms. Baldwin was fully aware of the due date for filing a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent, and the patentee verbally indicated that he wished to pay the maintenance fee. Therefore, according to the patentee's intention to pay the maintenance fee, Ms. Baldwin was expected to enter the due date into the Firm's docketing system, IPMaster, even before the pre-bill was paid. In other words, it is the IP docketing manager's responsibility to enter all due dates into the IP docketing system. Unfortunately, as discussed above, the due date was never entered into the docketing system, and it is believed that this incident was clearly due to an error which eventually caused the delay at issue.

7. In December 2009, Ms. Jane Kim continued working as an IP docketing assistant with Ms. Baldwin and she also entered data into IPMaster, oftentimes confirming data entered by Ms. Baldwin. Since Ms. Kim joined the Firm in 2007, the IP docketing department always had two people working in parallel so that data entry can be cross-checked. For example, when communications are received from the USPTO, due dates are first entered into the docketing system by the IP docketing manager, and then the IP docketing manager's assistant confirms the data entry when reporting the communications to applicants/clients. However, this case was

exceptional in that there was no official communication to report. Therefore, data entry for the instant expired patent was entirely dependent on the IP docketing manager.

8. I also calendar my own important due dates independently as necessary by marking emails in the Microsoft Outlook with the due dates. However, I did not mark the email sent to the patentee on December 17, 2009, believing that it would be entered to the docketing system by the docketing manager. Further, as discussed above, my secretary also keeps her own calendar, but was unable to calendar the due date for the expired patent because the reminder email was not sent to her. See other due dates listed for June 29, 2010 in the Outlook calendar managed by secretaries (Lee Exhibit 4, pg. 1). Therefore, a business routine for performing the docketing function that could reasonably be relied upon to avoid errors was in place at the time the above-identified docketing error occurred. Despite the fact that the Firm had a system that could prevent the failure to file a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent, the above discussed errors resulted in the failure.

9. Since Ms. Baldwin joined the firm, I oversee all IP staffs of the Firm and worked closely with Ms. Baldwin, supervising her on a daily basis at least for the first month. I found that Ms. Baldwin was very knowledgeable in many aspects of patent prosecution and that she was sufficiently trained and experienced with regard to docketing. Therefore, it is believed that function and routine for its performance that reliance upon such employee represented the exercise of due care.

10. Indeed, if Ms. Baldwin entered the due date of June 29, 2010 for paying the first maintenance fee with a petition to accept unintentionally delayed payment of maintenance fee into the docketing system, as expected, the daily due date reminder for June 29, 2010 would have listed the expired patent. However, unfortunately, since the due date was never entered by Ms. Baldwin, no reminder came up with regard to the expired patent, as shown in the daily due date reminder circulated to IP attorneys and secretaries via email on June 29, 2010 (Lee Exhibit 5, pg. 1).


11. Ms. Baldwin left the Firm as of March 5, 2010. As required by the Office of Petitions, I tried to contact Ms. Baldwin to obtain her statement, using available information (Lee Exhibit 6, pgs. 1-4) provided by her before she left the firm. In particular, I tried emailing and calling her unsuccessfully on January 11, 2011 since the email was not deliverable to the provided email address and her phone number was out of service. Further, a letter was sent to

her home address on January 13, 2011, but no reply was received from Ms. Baldwin as of today. Therefore, despite the above-mentioned efforts, Ms. Baldwin has not been reachable to obtain the required statement.

12. Linda Chung was to provide a declaration relating to various events occurring in 2004 and the docketing of the initial maintenance fee due date. On Friday February 4, 2011, I spoke with Ms. Chung who advised that she would be present at the Firm to sign the declaration. However, Ms. Chung never arrived as she indicated. I called Ms. Chung throughout the day on February 7, 2011, but Ms. Chung did not answer her phone nor did she return any of my voice messages. Thus, Ms. Chung is unavailable at the time of filing of the instant Petition to sign a declaration.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: February 7, 2011


Harry Lee

Harry Lee

From: Harry Lee
Sent: Wednesday, November 18, 2009 4:18 PM
To: [REDACTED]
Subject: Shieldlife 2013 Active Patent and Trademark Status Report - HSL.xls
Attachments: Shieldlife 2013 Active Patent and Trademark Status Report - HSL.xls
Categories: Purple Category

Dear Mr. Lee:

Per your request, attached is a list of active patent and trademark cases for Shieldlife.

If you have a question or need anything else, please do not hesitate to contact us.

Very truly yours,

Harry Lee

Lee Dec.

Exhibit 1, pg. 1

Action	Attorney	Docket Number	Status	Country	Status
Status Check	Lew Macapagal	2013-3009	Filed	United States	Pending Examination
Status Check 18 mos.	Lew Macapagal	2013-3010	Filed	United States	Pending Publication
File RCE? 1 Month Reminder	Harry Lee	2013-3011	Filed	United States	Response to OA filed 7/27/09
Status Check 1	Rolando Gonzalez	2013-3012	Filed	United States	Response to OA filed 10/9/09
Maintenance Fee Due - 3 mo. rmdr.	Harry Lee	2013-3-03	Granted	United States	Pending Reminder
Maintenance Fee Due - 3 mo. rmdr.	Harry Lee	2013-3-02	Granted	United States	Pending Reminder
Maintenance Fee Due - 3 mo. rmdr.	Harry Lee	2013-3008	Granted	United States	Pending Reminder

Lee Dec.
Exhibit 1, pg. 2

Harry Lee

From: Harry Lee
Sent: Friday, December 11, 2009 5:58 PM
To: Emily Baldwin
Subject: 2013-3-06 Emily, this just caught my attention. It was not listed in the list of Shieldlife cases. We should inform client asking whether they want to revive this patent.

Categories: Purple Category

10/034,177		THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT		12-11-2009::20:52:57	
Bibliographic Data					
Application Number:	10/034,177	Customer Number:	35884		
Filing or 371 (c) Date:	12-28-2001	Status:	Patent Expired Due to NonPayment of Maintenance Fees Under 37 CFR 1.362		
Application Type:	Utility	Status Date:	07-28-2008		
Examiner Name:	HOANG, TU BA	Location:	FILE REPOSITORY (FRANCONIA)		
Group Art Unit:	3742	Location Date:	06-28-2004		
Confirmation Number:	1566	Earliest Publication No:	US 2002-0195442 A1		
Attorney Docket Number:	2013-3-06	Earliest Publication Date:	12-26-2002		
Class / Subclass:	219/505	Patent Number:	6,756,572		
First Named Inventor:	Myoung Jun Lee , La Habra, CA (US)	Issue Date of Patent:	06-29-2004		
Title of Invention:		THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT		Title of Invention:	

Close Window

Lee Dec.
 Exhibit 2, pg. 1

Harry Lee

From: Harry Lee
Sent: Friday, December 11, 2009 6:07 PM
To: Emily Baldwin
Subject: Shieldlife cases

Emily,

Please include all cases in the list including abandoned and issued cases that expired due to failure of maintenance fee payment.

**11 records found for Attorney Docket Number: 2013. Results sorted by
 Application No. Descending**

Application No.	Patent No.	Earliest Publication No.	Attorney Docket No.	Customer Number	Status	Date Filing
12/062,216	-	US 2009-0126109 A1	2013-3012	35884		12-09-2009 04-03-
12/051,242	-	US 2008-0230535 A1	2013-3011	35884		12-01-2009 03-19-
11/750,227	-	US 2008-0283517 A1	2013-3010	35884		06-03-2009 05-17-
11/733,693	-	US 2008-0251511 A1	2013-3009	35884		11-17-2009 04-10-
11/679,034	7,538,279	US 2007-0199737 A1	2013-3008	35884		05-06-2009 02-26-
10/422,491	-	US 2004-0118674 A1	2013-3-07	35884		12-11-2006 04-24-
10/034,177	6,756,572	US 2002-0195442 A1	2013-3-06	35884		07-28-2008 12-28-
10/005,461	-	-	2013-3-05	35884		08-12-2002 12-03-
09/545,629	6,300,597	-	2013-3-03	35884		09-21-2001 04-07-
09/471,666	6,226,450	-	2013-3-01	35884		06-02-2005 12-24-
09/192,957	6,153,856	-	2013-3-02	35884		04-15-2009 11-16-

Results sorted by Application No. Descending

1: 12/062,216 - 09/192,957

Lee Dec.

Exhibit 2, pg. 2

Harry Lee

From: Emily Baldwin
Sent: Thursday, December 17, 2009 10:58 AM
To: [REDACTED]
Cc: Harry Lee; Mail Patent
Subject: Maintenance Fee Due Reminder for U.S. Patent No. 6,756,572 [Our Ref. 2013-3-06]
Attachments: 12.17.09 Maintenance Fee Pre-bill 2013-3-06.pdf; 12.17.09 USPTO Expired Status of Patent No 6756572 .pdf

Categories: Purple Category

Re: U.S. Patent Application for:
THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT
Serial No.: 10/034,177
Patent No.: 6,756,572
Filing Date: December 28, 2001
Our Ref. No.: 2013-3-06

Dear Mr. Lee:

We write further to our letter of August 20, 2004, in which we reported the issuance of the above-referenced patent and future maintenance fees due in the granted patent. A 3 1/2 year maintenance fee was due in this patent to avoid abandonment of the same on June 29, 2008. The cost of this maintenance was \$490.00. Unfortunately, we did not receive your instructions to pay this fee before said date. As a result, this patent has now expired.

If it was not your intention to allow this patent to expire, the 3 1/2 maintenance fee can still be paid if submitted with a petition to revive and a surcharge in the amount of \$1,640.00 in compliance with United States Patent and Trademark Office (USPTO) regulations. Our charge for attending to this matter is \$[REDACTED].

The deadline to file the petition and submit the aforementioned fees to the USPTO is June 29, 2010, two years from the due date to the maintenance fee. Attached is our pre-invoice for this matter. Please be advised that we require prepayment of our invoice before we revive the patent. If you do not wish to revive this patent, it will remain abandoned.

Please provide us with you instructions and payment as soon as possible regarding this matter. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Emily Baldwin, CP
Lee, Hong, Degerman, Kang & Waimey
A Professional Corporation
660 S. Figueroa Street
Suite 2300
Los Angeles, California 90017
Telephone: (213) 623-2221/8016
Facsimile: (213) 623-2211
E-mail: ebaldwin@lhlaw.com

Lee Dec:
Exhibit 3, pg. 1

LEE, HONG, DEGERMAN, KANG & WAIMEY
660 South Figueroa Street
Suite 2300
Los Angeles, CA 90017

December 17, 2009

Lee, Myoung Jun
[REDACTED]

In Reference To: Patent / Thermo-Sensitive Heater and Heater Driving Circuit
Our Ref. No: 2013-3-06
Invoice #60016

Professional Services

	Amount
12/17/2009 JYK Prepare transmittal for payment of 3 1/2 year maintenance fee of issued patent.	[REDACTED]
For professional services rendered	[REDACTED]
Additional Charges:	
12/17/2009 Commissioner of Patents (Maintenance Fee)	490.00
Commissioner of Patents (Surcharge Fee)	1,640.00
Postage/Copying	15.00
Total costs	\$ [REDACTED]
Total amount of this bill	\$ [REDACTED]

Lee Dec.
Exhibit 3, pg. 2

United States Patent & Trademark Office

Page 1 of 1

Revised Patent Application Information Report

Download

Order Certified Application As Filed

Order Certified File Wrapper

View Order List

10034,177		THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT	
Class	Application Data	Publication	Patent Data
Bibliographic Data			
Application Number:	10/034,177	Customer Number:	35884
Filing or 371 (c) Date:	12-29-2001	Status:	Patent Expired Due to NonPayment of Maintenance Fees Under 37 CFR 1.362
Application Type:	Utility	Status Date:	07-29-2009
Examiner Name:	HOANG, TU BA	Location:	FILE REPOSITORY (FRANCONIA)
Group Art Unit:	3742	Location Date:	06-28-2004
Confirmation Number:	1566	Earliest Publication No:	US 2002-0195442 A1
Attorney Docket Number:	2013-3-04 Undan	Earliest Publication Date:	12-26-2002
Class / Subclass:	219/505	Patent Number:	6,756,572
First Named Inventor:	Myoung Jun Lee, La Habra, CA (US)	Issue Date of Patent:	06-29-2004

Title of Invention: THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT

Lee Dec.

Exhibit 3, pg. 3

https://portal.uspto.gov/secure/myportal/!ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0o... 12/17/2009

July 2010

附註：本報記者採訪時，曾向該公司經理詢問，該公司是否曾向政府或有關部門報告過此類事件。該經理表示，該公司從未向任何部門報告過此類事件，並表示該公司將繼續加強對員工的培訓，以防止類似事件的再次發生。

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40

Daily Task List	
	Arranged By: Due Date
<input checked="" type="checkbox"/>	FW: (TOP PRIORITY CASE) Your Ref. N.
<input checked="" type="checkbox"/>	RE: US Patent Application No. 12/168...
<input checked="" type="checkbox"/>	RE: U.S. Patent Application No. 12/558...
<input checked="" type="checkbox"/>	RE: U.S. Patent Application No. 12/485...
<input checked="" type="checkbox"/>	(URGENT) Re: New U.S. Non-Provisional
Notes	
Lee Dec. Exhibit 4, pg. 1	

Harry Lee

1

1/13/2011 4:29 PM

Harry Lee

From: Jane Kim
Sent: Tuesday, June 29, 2010 11:30 AM
To: IP Attorneys; IP Secretaries
Cc: IP Docket
Subject: Daily Due Date Reminder (6/29/10-6/30/10)

Due Date	Event	Case No.	Attorney
6/29/2010	Resp. to 3rd OA Due	2101-3137	SS
6/30/2010	Advisory Action Response Due	2060-3321C1	NL
6/30/2010	Resp. to 1st OA Due	2060-3332C2	JJL
6/30/2010	Resp. to 2nd OA Due	2080-3680	LEM
6/30/2010	Ntc Of Missing Parts Due	2080-3642C1	LEM

Jane Kim
 Patent Administrator

Lee, Hong, Degerman, Kang & Walney
 A Professional Corporation
 660 S. Figueroa Street
 Suite 2300
 Los Angeles, California 90017
 Telephone: (213) 623-2221
 Facsimile: (213) 623-2211/8601
 E-mail: jkim@lhaw.com

Jane Kim
 Patent Administrator

Lee Dec.
 Exhibit 5, pg. 1

Harry Lee

From: Harry Lee
Sent: Tuesday, January 11, 2011 9:40 AM
To: [REDACTED]@yahoo.com
Subject: Request for a statement [2013-3-06]
Attachments: 12.17.09 Maintenance Fee Pre-bill 2013-3-06.pdf; 12.17.09 USPTO Expired Status of Patent No 6756572 .pdf; 2013-3-06 Petition as Filed (dated 9-29-10).pdf; 2013-3-06 Decision on Petition (dated 12-7-10).pdf

Categories: Purple Category

Dear Emily,

Happy New Year! I hope you are well.

We are in the process of preparing a petition to accept the delayed payment of the maintenance fee and would like to request a statement from you. If you agree to cooperate, we will prepare a statement for you and you can sign and date the statement, and return the same to us. Please let me know whether you are willing to sign a statement in view of the following fact.

The following highlighted email was sent to the client on December 17, 2009 to remind a maintenance fee due date of June 29, 2010. The email was sent with a pre-bill attached herewith and the bill was paid by the client on January 7, 2010. However, despite the reminder email sent to the client, the due date never came up from our docketing system and we failed to pay the delayed maintenance fee even after we received the payment from the client. Accordingly, as shown in the attached decision on petition, the USPTO required a statement from a docketing manager to show that the due date was not entered into the docketing system by an error. (See page 6.)

We will provide you with a statement upon hearing from you. As indicated in the decision on petition, your statement would be critical for the petition to be granted. I would appreciate it very much if you could sign the statement.

From: Emily Baldwin
Sent: Thursday, December 17, 2009 10:58 AM
To: [REDACTED]
Cc: Harry Lee; Mail Patent
Subject: Maintenance Fee Due Reminder for U.S. Patent No. 6,756,572 [Our Ref. 2013-3-06]

Re: U.S. Patent Application for:
THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT
Serial No.: 10/034,177
Patent No.: 6,756,572
Filing Date: December 28, 2001
Our Ref. No.: 2013-3-06

Dear Mr. Lee:

We write further to our letter of August 20, 2004, in which we reported the issuance of the above-referenced patent and future maintenance fees due in the granted patent. A 3 1/2 year maintenance fee was due in this patent to avoid abandonment of the same on June 29, 2009. The cost of this maintenance was \$490.00. Unfortunately, we did not receive your instructions to pay this fee before said date. As a result, this patent has now expired.

Lee Dec.

Exhibit 6, pg. 1

If it was not your intention to allow this patent to expire, the 3 1/2 maintenance fee can still be paid if submitted with a petition to revive and a surcharge in the amount of \$1,640.00 in compliance with United States Patent and Trademark Office (USPTO) regulations. Our charge for attending to this matter is \$[REDACTED].

The deadline to file the petition and submit the aforementioned fees to the USPTO is June 29, 2010, two years from the due date to the maintenance fee. Attached is our pre-invoice for this matter. Please be advised that we require prepayment of our invoice before we revive the patent. If you do not wish to revive this patent, it will remain abandoned.

Please provide us with your instructions and payment as soon as possible regarding this matter. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Emily Baldwin, GP
Lee, Hong, Degerman, Kang & Waimey
A Professional Corporation
660 S. Figueroa Street
Suite 2300
Los Angeles, California 90017
Telephone: (213) 623-2211/8016
Facsimile: (213) 623-2211
E-mail: ebaldwin@lhjlaw.com

Very truly yours,

Harry Lee, Ph.D.

LEE, HONG, DEGERMAN, KANG & WAIMEY
A Professional Corporation
660 South Figueroa Street, Suite 2300
Los Angeles, California 90017
Telephone: (213) 244-7116
Facsimile: (213) 623-2211/ 8601

CONFIDENTIALITY NOTE: The information contained in this EMAIL transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable Federal or State Law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this transmission is strictly prohibited. If you receive this transmission in error, please notify us immediately. Thank you.

Lee Dec.

Exhibit 6, pg. 2

Harry Lee

From: Mail Delivery System [MAILER-DAEMON@p01c11o147.mxlogic.net]
Sent: Tuesday, January 11, 2011 9:39 AM
To: Harry Lee
Subject: Mail delivery failed
Attachments: ATT00002.txt
Categories: Purple Category

A message that you have sent could not be delivered to one or more recipients. This is a permanent error. The following address(es) failed:

<[REDACTED]@yahoo.com>; 554 Backend Replied [aa59c2d4.7440f940.14322.00-569.35704.p01c11o147.mxlogic.net]: delivery error: dd This user doesn't

Lee Dec.

Exhibit 6, pg. 3

THE LAW FIRM OF
LEE, HONG, DEGERMAN, KANG & WAIMEY
 A PROFESSIONAL CORPORATION

850 SOUTH FIGUEROA STREET
 SUITE 2300
 LOS ANGELES, CALIFORNIA 90017
 TELEPHONE: (213) 623-2221
 FACSIMILE: (213) 623-2211 / (213) 623-8801

OFFICES
 LOS ANGELES
 ORANGE COUNTY

ERWIN BENEDICTO	DAVID S. MAJALI
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F. JASON FAR-MADIAN	MICHAEL G. OLENER
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SHADI HOSEINIGOUN	NIKAM J. PATEL
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NORMAN T. LEE	MARC WM. VITOLO
PETER Y. LEE	STEPHEN T. WAIMEY
TAMMY S. LO	DAVID C. DEGERMAN
JEFFREY J. LOTEPEICH	(1912 - 2009)
LEW E. MACAPADAL	PATENT AGENT
	OF COUNSEL
	ADMITTED ONLY
	IN DC AND NJ

January 13, 2011

Emily Baldwin

Dear Emily,

Happy New Year! I hope you are well.

We tried to reach you via email on January 11, 2011, but our email sent to [REDACTED]@yahoo.com was not delivered. We also called you at 562-[REDACTED], but your cell phone was no longer in service according to the message from the Verizon Wireless.

We are in the process of preparing a petition to accept the delayed payment of the maintenance fee and would like to request a statement from you. If you agree to cooperate, we will prepare a statement for you and you can sign and date the statement, and return the same to us. Please let me know whether you are willing to sign a statement in view of the following fact.

The attached copy of email was sent to the client on December 17, 2009 to remind a maintenance fee due date of June 29, 2010. The email was sent with a pre-bill and the bill was paid by the client on January 7, 2010. However, despite the reminder email sent to the client, the due date never came up from our docketing system on or before June 29, 2010, and we failed to pay the delayed maintenance fee even after we received the payment from the client. It is believed that the due date was never entered into the docketing system somehow. Accordingly, we need to show to the USPTO that the due date was not entered into the docketing system by an error.

We will provide you with a statement upon hearing from you. As indicated in the decision on petition, your statement would be critical for the petition to be granted. I would appreciate it very much if you could sign the statement.

Very truly yours,

Harry Lee, Ph.D.

Enclosure: Copy of email sent to client on December 17, 2009 with pre-bill and expired status of patent.

Lee Dec.

Exhibit 6, pg. 4

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Attorney Docket No. 2013-3-06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:

Myoung Jun Lee

Serial No.: 10/034,177

Filed: December 28, 2001

For: THERMO-SENSITIVE HEATER
AND HEATER DRIVING CIRCUIT

Patent No.: 6,756,572

Issued: June 29, 2004

Conf. No.: 1566

DECLARATION BY MICHELLE PARK IN SUPPORT OF PETITION FOR
RECONSIDERATION OF DECISION REFUSING TO ACCEPT DELAYED PAYMENT
OF MAINTENANCE FEE UNDER 37 CFR 1.378(E)

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

I declare that:

1. I am submitting this statement in support of a petition under 37 CFR 1.378(e) for reconsideration of decision refusing to accept delayed payment of maintenance fee.
2. I have been an employee of LEE, HONG, DEGERMAN, KANG & WAIMEY ("the Firm") from July 1991 to the present. I have held various positions and performed numerous duties including IP docketing, billing, and supervising secretaries and other staff members. I have held the position of Office Manager since 2004.
3. Regarding Linda Chung, Ms. Chung was employed by the Firm from December 2003 to February 2011, and held the position of patent secretary from 2004-2006. Ms. Chung did not have significant prior experience as a patent secretary and docketing patent matters, but she did receive initial and ongoing training by supervising attorneys and by myself. Ms. Chung's duties as patent secretary included filing applications and other prosecution related papers with the USPTO, docketing due dates, drafting client correspondence, and providing

general secretarial support to several attorneys. To assure proper execution of assigned tasks, Ms. Chung was directly supervised by attorneys with whom she worked, and these attorneys reviewed her work product (e.g., PTO filings, client letters, etc.) to assure proper execution of her assigned tasks.

4. Regarding Emily Baldwin, Ms. Baldwin worked for the Firm from July 2009 to March 2010 and held the position of IP Docketing Manager. Ms. Baldwin had over six years of prior experience in IP prosecution/operations including the filing and docketing of patent matters. Upon joining the firm, Ms. Baldwin was trained on the Firm's procedures for docketing patent matters and use of the Firm's docketing software IP Master. Ongoing training was provided by Patent Attorney Richard Salfelder and Patent Agent Harry Lee. To assure proper execution of assigned tasks, Mr. Lee directly supervised Ms. Baldwin on a daily basis at least for the first month with the Firm. Ms. Baldwin's duties as IP Docketing Manager included docketing due dates of incoming communications from the USPTO, docketing due dates on new applications and other items (e.g., IDSs, payment of maintenance fees, examiner interview dates, etc.), and provided daily and bi-monthly docketing status reports that are distributed to attorneys and staff.

5. Ongoing checks of Ms. Baldwin's work product occurred when Ms. Baldwin would issue daily docketing reports. (Park Exhibit 1). The assigned attorneys use these daily docketing reports for, among other things, verifying that the Firm's docket has correct information and due dates. This verification serves to assure that Ms. Baldwin was properly performing her duties.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: February 7, 2011


Michelle Park

Harry Lee

From: Jane Kim
Sent: Tuesday, June 29, 2010 11:30 AM
To: IP Attorneys; IP Secretaries
Cc: IP Docket
Subject: Daily Due Date Reminder (6/29/10-6/30/10)

Action Due Date	Action	Exhibit Number	Assigned
6/29/2010	Resp. to 3rd OA Due	2101-3137	SS
6/30/2010	Advisory Action Response Due	2080-3321C1	NL
6/30/2010	Resp. to 1st OA Due	2060-3332C2	JJL
6/30/2010	Resp. to 2nd OA Due	2080-3680	LEM
6/30/2010	Ntc Of Missing Parts Due	2080-3642C1	LEM

Jane Kim
 Patent Administrator

Lee, Hong, Degerman, Kang & Waimey
 A Professional Corporation
 660 S. Figueroa Street
 Suite 2300
 Los Angeles, California 90017
 Telephone: (213) 623-2221
 Facsimile: (213) 623-2211/8601
 E-mail: jkim@lhaw.com

Park Dec.
 Exhibit 1

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Attorney Docket No. 2013-3-06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:

Myoung Jun Lee

Serial No: 10/034,177

Filed: December 28, 2001

For: THERMO-SENSITIVE HEATER
AND HEATER DRIVING CIRCUIT

Patent No.: 6,756,572

Issued: June 29, 2004

Conf. No.: 1566

**DECLARATION BY JANE KIM IN SUPPORT OF PETITION FOR
RECONSIDERATION OF DECISION REFUSING TO ACCEPT DELAYED PAYMENT
OF MAINTENANCE FEE UNDER 37 CFR 1.378(E)**

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

I declare that:

1. I am submitting this statement in support of a petition under 37 CFR 1.378(e) for reconsideration of decision refusing to accept delayed payment of maintenance fee.

2. I have been an employee of LEE, HONG, DEGERMAN, KANG & WAIMEY ("the Firm") from July 2007 to the present. During the period between 2007 and December 2009, my position was that of a docketing assistant supporting three successive IP docketing managers, Robert Concepcion, Carl Alvarado, and Emily Baldwin. My duties as an assistant included at least the following:

- (a) Daily checking and docketing of incoming communications (letter, email, and fax) received from the USPTO, associate, and clients;
- (b) Daily distribution of docketed communications to assigned secretaries and/or attorneys;
- (c) Periodic status check for pending cases;

- (d) Reporting communications received from the USPTO (Office Action, Notice of Allowance, and Notice of Missing Parts) to clients, downloading and saving Office Actions and cited references in the IP directory of a Firm server;
- (e) Preparation of Declaration/Power of Attorney & Assignment;
- (f) Filing of priority documents to the USPTO;
- (g) Filing of Assignment with the USPTO; and
- (h) Reviewing Filing Receipt & Notice of Recordation of Assignment Document.

3. I am the IP docketing manager as of January 2011.

4. Prior to January 2009, the Firm had a business routine for docketing and paying maintenance fees of patents. The routine included reporting to the patent owner that maintenance fee payments for an issued patent were necessary. The Firm would not docket the due dates for the maintenance fees as this function was believed to be tended to by the patent owner. As the maintenance fees become due, if we received specific direction from the patent owner, payment of the maintenance fees would be tended to by the Firm.


5. After around January 2009, the Firm had the business routine of docketing maintenance fees of patents already issued or issued later.

6. Regarding former IP docketing manager, Emily Baldwin's mistake of not entering the due date of June 29, 2010 to make the delayed payment of the maintenance fee, I state that the due date should have been entered into the docketing system by Ms. Baldwin. Internal email communications of December 11, 2009 between Ms. Baldwin and Harry Lee clearly discuss the expired '572 patent and the possibility of reviving the expired patent. (Kim Exhibit 1, pgs. 1-2). Further, when a maintenance fee reminder email and a pre-bill were sent to the patentee on December 17, 2009, the due date for payment of the maintenance fee should have been entered into the docketing system. (Kim Exhibit 2, pgs. 1-3). This is our business practice of docketing maintenance fee due dates when such dates are not presently entered into the system. However, I confirm that the docketing system does not have any record showing that the maintenance fee due date was entered. Therefore, the reasons that the maintenance fee due date was not entered into the docketing system was very likely due to a clerical oversight by Ms. Baldwin.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: February 7, 2011


Jane Kim

Harry Lee

From: Harry Lee
Sent: Friday, December 11, 2009 5:58 PM
To: Emily Baldwin
Subject: 2013-3-06 Emily, this just caught my attention. It was not listed in the list of Shieldlife cases. We should inform client asking whether they want to revive this patent.

Categories: Purple Category

10/034,177		THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT		12-11-2009:20:52:57
Bibliographic Data				
Application Number:	10/034,177	Sequence Number:	35884	
Filing or 371 (c) Date:	12-28-2001	Status:	Patent Expired Due to NonPayment of Maintenance Fees Under 37 CFR 1.362	
Application Type:	Utility	Status Date:	07-28-2008	
Examiner Name:	HOANG, TU BA	Location:	FILE REPOSITORY (FRANCONIA)	
Group Art Unit:	3742	Location Date:	06-28-2004	
Confirmation Number:	1566	Earliest Publication No:	US 2002-0195442 A1	
Attorney Docket Number:	2013-3-06	Earliest Publication Date:	12-26-2002	
Class / Subclass:	219/505	Patent Number:	6,756,572	
First Named Inventor:	Myoung Jun Lee, La Habra, CA (US)	Issue Date of Patent:	06-29-2004	
Title of Invention:		THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT		

[Close Window](#)

Kim Dec.

Exhibit 1, pg. 1

Harry Lee

From: Harry Lee
 Sent: Friday, December 11, 2009 6:07 PM
 To: Emily Baldwin
 Subject: Shieldlife cases

Emily,

Please include all cases in the list including abandoned and issued cases that expired due to failure of maintenance fee payment.

**11 records found for Attorney Docket Number: 2013- Results sorted by
 Application No. Descending**

Application No.	Patent No.	Earliest Publication No.	Attorney Docket No.	Customer Number	Status	Date Filing
12/062,216	-	US 2009-0126109 A1	2013-3012	35884		12-09-2009 04-03-
12/051,242	-	US 2008-0230536 A1	2013-3011	35884		12-01-2009 03-19-
11/750,227	-	US 2008-0283517 A1	2013-3010	35884		06-03-2009 05-17-
11/733,693	-	US 2008-0251511 A1	2013-3009	35884		11-17-2009 04-10-
11/679,034	7,538,279	US 2007-0199737 A1	2013-3008	35884		05-06-2009 02-26-
10/422,491	-	US 2008-0118674 A1	2013-3-07	35884		12-11-2006 04-24-
10/034,177	6,756,572	US 2002-0195442 A1	2013-3-06	35884		07-28-2008 12-28-
10/005,461	-	-	2013-3-05	35884		08-12-2002 12-03-
09/545,629	6,300,597	-	2013-3-03	35884		09-21-2001 04-07-
09/471,866	6,226,850	-	2013-3-01	35884		06-02-2005 12-24-
09/192,957	6,153,856	-	2013-3-02	35884		04-15-2009 11-16-

Results sorted by Application No. Descending

1: 12/062,216 - 09/192,957

Kim Dec.

Exhibit 1, pg. 2

Harry Lee

From: Emily Baldwin
Sent: Thursday, December 17, 2009 10:58 AM
To: [REDACTED]@hotmail.com
Cc: Harry Lee; Mail Patent
Subject: Maintenance Fee Due Reminder for U.S. Patent No. 6,756,572 [Our Ref. 2013-3-08]
Attachments: 12.17.09 Maintenance Fee Pre-bill 2013-3-08.pdf; 12.17.09 USPTO Expired Status of Patent No 6756572 .pdf
Categories: Purple Category

Re: U.S. Patent Application for:
THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT
Serial No.: 10/034,177
Patent No.: 6,756,572
Filing Date: December 28, 2001
Our Ref. No.: 2013-3-08

Dear Mr. Lee:

We write further to our letter of August 20, 2004, in which we reported the issuance of the above-referenced patent and future maintenance fees due in the granted patent. A 3 1/2 year maintenance fee was due in this patent to avoid abandonment of the same on June 29, 2008. The cost of this maintenance was \$490.00. Unfortunately, we did not receive your instructions to pay this fee before said date. As a result, this patent has now expired.

If it was not your intention to allow this patent to expire, the 3 1/2 maintenance fee can still be paid if submitted with a petition to revive and a surcharge in the amount of \$1,840.00 in compliance with United States Patent and Trademark Office (USPTO) regulations. Our charge for attending to this matter is \$[REDACTED].

The deadline to file the petition and submit the aforementioned fees to the USPTO is June 26, 2010, two years from the due date to the maintenance fee. Attached is our pre-invoice for this matter. Please be advised that we require prepayment of our invoice before we revive the patent. If you do not wish to revive this patent, it will remain abandoned.

Please provide us with you instructions and payment as soon as possible regarding this matter. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Emily Baldwin, CP
Lee, Hong, Degerman, Kang & Waimay
A Professional Corporation
660 S. Figueroa Street
Suite 2300
Los Angeles, California 90017
Telephone: (213) 623-2221/8016
Facsimile: (213) 623-2211
E-mail: ebaldwin@lhlaw.com

Kim Dec.

Exhibit 2, pg. 1

LEE, HONG, DEGERMAN, KANG & WAIMEY
680 South Figueroa Street
Suite 2300
Los Angeles, CA 90017

December 17, 2009

Lee, Myoung Jun
16210 S. Maple Avenue
Gardena CA 90248

In Reference To: Patent / Thermo-Sensitive Heater and Heater Driving Circuit
Our Ref. No: 2013-3-06
Invoice #60016

Professional Services

12/17/2009 JYK Prepare transmittal for payment of 3 1/2 year maintenance fee of issued patent.

For professional services rendered

Amount

\$

Additional Charges:

12/17/2009 Commissioner of Patents (Maintenance Fee)

490.00

Commissioner of Patents (Surcharge Fee)

1,840.00

Postage/Copying

15.00

Total costs

\$

Total amount of this bill

\$

Kim Dec.
Exhibit 2, pg. 2

United States Patent & Trademark Office

Page 1 of 1

Secure Patent Application Information Request

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10034,177 THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT

Serial	Application	Publication	Publication	Publication	Publication	Publication	Publication	Publication	Publication
Number	Number	Number	Number	Number	Number	Number	Number	Number	Number
10034,177	10034,177	10034,177	10034,177	10034,177	10034,177	10034,177	10034,177	10034,177	10034,177
Bibliographic Data									
Application Number:	10034,177	Customer Number:	35884						
Filing or 371 (c) Date:	12-28-2003	Status:	Patent Expired Due to Nonpayment of Maintenance Fees Under 37 CFR 1.362						
Application Type:	Utility	Status Date:	07-28-2008						
Examiner Name:	COANG, TULBA	Location:	FILE REPOSITORY (FRANCONIA)						
Group Art Unit:	3742	Location Date:	06-28-2004						
Confirmation Number:	1565	Earliest Publication No:	US 2002-0195442 A1						
Attorney Docket Number:	2013-3-06 Update	Earliest Publication Date:	12-26-2002						
Class / Subclass:	219/505	Patent Number:	6,756,572						
First Named Inventor:	Myoung Jun Lee, La Habra, CA (US)	Issue Date of Patent:	06-29-2004						

Title of Invention: THERMO-SENSITIVE HEATER AND HEATER DRIVING CIRCUIT

Kim Dec.

Exhibit 2, pg. 3

https://portal.uspto.gov/secure/myportal/!ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0o... 12/17/2009

PAGE 42/43 * RCVD AT 2/7/2011 11:24:33 PM [Eastern Standard Time] * SVR:USPTO-EFXXF-5/44 * DNIS:2738300 * CSID:1 213 623 2211 * DURATION (mm-ss):09:42

PTO/SB/17p (07-09)

 Approved for use through 07/31/2012. OMB 0651-0031
 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FEE Under 37 CFR 1.17(f), (g) & (h) TRANSMITTAL (Fees are subject to annual revision)	Application Number	10/034,177
	Filing Date	December 28, 2001
	First Named Inventor	Myoung Jun Lee
	Art Unit	
	Examiner Name	
Send completed form to: Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450	Attorney Docket Number	2013-3-08

Enclosed is a petition filed under 37 CFR 1.378(e) that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$400.00 is enclosed.
 This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop: Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(f), see form PTO/SB/17i.

Payment of Fees (small entity amounts are NOT available for the petition fees)

☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 502290:
☒ petition fee under 37 CFR 1.17(f), (g) or (h) ☒ any deficiency of fees and credit of any overpayments

☐ Check in the amount of \$ _____ is enclosed.

☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462

For petitions filed under:

- § 1.36(a) - for revocation of a power of attorney by fewer than all applicants.
- § 1.63(a) - to accord a filing date.
- § 1.57(a) - to accord a filing date.
- § 1.192 - for decision on a question not specifically provided for.
- § 1.183 - to suspend the rules.
- § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463

For petitions filed under:

- § 1.12 - for access to an assignment record.
- § 1.14 - for access to an application.
- § 1.47 - for filing by other than all the inventors or a person not the inventor.
- § 1.58 - for expungement of information.
- § 1.103(a) - to suspend action in an application.
- § 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 - for review of refusal to publish a statutory invention registration.
- § 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.550(c) - for patent owner requests for extension of time in *ex parte* reexamination proceedings.
- § 1.396 - for patent owner requests for extension of time in *inter partes* reexamination proceedings.
- § 5.12 - for expedited handling of a foreign filing license.
- § 5.15 - for changing the scope of a license.
- § 5.23 - for retroactive license.

Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464

For petitions filed under:

- § 1.19(g) - to request documents in a form other than that provided in this part.
- § 1.24 - for accepting color drawings or photographs.
- § 1.61 - for entry of a model or exhibit.
- § 1.102(d) - to make an application special.
- § 1.138(e) - to expressly abandon an application to avoid publication.
- § 1.313 - to withdraw an application from issue.
- § 1.314 - to defer issuance of a patent.

/Jeffrey Lotspeich/

Signature

Jeffrey J. Lotspeich

Typed or printed name

February 7, 2011

Date

45,737

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 38 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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P. 01

Attorney Docket No. 2013-3-06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:

Myoung Jun Lee

Serial No: 10/034,177

Filed: December 28, 2001

For: THERMO-SENSITIVE HEATER
AND HEATER DRIVING CIRCUIT

Patent No.: 6,756,572

Issued: June 29, 2004

Conf. No.: 1566

**PETITION FOR RECONSIDERATION OF DISMISSAL DECISION REFUSING TO
ACCEPT DELAYED PAYMENT OF MAINTENANCE FEE UNDER 37 CFR 1.378(E)**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is in response to the Dismissal Decision on Petition under 37 CFR 1.378(b) dated December 7, 2010, in connection with the above-identified application. The response is due February 7, 2011. This petition is accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17. Please charge any fees and credit any overpayment to our deposit account No. 502290. Please consider the following remarks:

REMARKS

This is a Petition under 37 CFR § 1.378(e) requesting reconsideration of the Dismissal of Petition to Accept Delayed Payment of Maintenance Fee mailed December 7, 2010 (the "Dismissal Decision) in the above-identified U.S. Patent 6,756,572 (the "572 Patent").

Reconsideration is timely requested in light of the additional statements and showings presented with the renewed Petition. It is respectfully submitted that the original showings, coupled with the additional evidence and arguments advanced with this Petition, demonstrate that all of the components of a grantable petition as set forth in 37 CFR § 1.378(b) have been shown in that: (1) the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely; (2) that the petition was filed promptly after the patentee became aware of the expiration of the patent; and (3) there were steps taken to ensure timely payment of the maintenance fee.

Additional evidence is presented with the instant Petition to respond to each of the suggestions made by the Petition's Attorney, Douglas I. Wood. In the event that the instant Petition has failed to satisfactorily address each of the issues identified by Mr. Wood so as to result in having the Petition granted, Petitioner requests that a phone call be made to the undersigned and an opportunity be provided to supplement this Petition.

Petitioner further notes that several items of evidence submitted herein have been redacted to preserve personal and/or confidential subject matter. The undersigned submits that the redacted information is believed to not have any bearing or relevance as to the reason for which the document is being submitted.

Showing of unavoidable delay

A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the Petitioner became aware of the expiration of the patent is set forth below and in the attached declarations in support of this petition.

Page 4 of the Dismissal Decision referred to the three periods to be considered during the evaluation of a petition of 37 CFR 1.378 (b), which are:

- (1) The delay in reply that originally resulted in expiration;

- (2) The delay in filing an initial petition pursuant to § 1.378 (b) to revive the application;
and
- (3) The delay in filing a grantable petition pursuant to § 1.378 (b) to revive the application.

The Dismissal Decision indicated that the original Petition lacked the showing required by time periods (1) and (2). In the instant Petition, Petitioner will now address each of these time periods.

(1) The delay in reply that originally resulted in expiration

With regard to time period (1), the Dismissal Decision states, on page 4, that the Petitioner has not shown that the delay that originally resulted in the expiration of the patent was unavoidable. The Dismissal Decision further addressed the need of adequate showing for delay involving employee error, such that:

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

(1) (A) Administrative error was the cause of the delay

Regarding time period (1), which relates to the delay in payment of the maintenance fee in the '572 patent, an administrative error occurred with regard to the actions of employee Linda Chung. Ms. Chung was an employee of the Firm from December 2003 to February 2011. From 2004-2006, Ms. Chung's position was that of a patent secretary having the duties that included filing applications and other prosecution related papers with the USPTO, docketing due

dates, drafting client correspondence, and providing general secretarial support to several attorneys.

The '572 patent issued on June 29, 2004. The issuance of the patent was reported to the patent owner on August 20, 2004. (Petition Exhibit 2). The reporting letter (the "Letter to Client") was sent to the patent owner along with the ribbon copy of the issued patent. (See reporting letter of Petition Exhibit 1, pgs. 1-2).

As explained in the original petition, the Letter to Client indicated that the '572 patent had maintenance fees due 3, 7, and 11 years after the issuance of the patent. The Letter to Client further explained that the Firm was not responsible for the non-payment of the maintenance fees and included the recommendation that the patent owner docket the dates for payment of the maintenance fees. *Id.* Maintenance fee due dates for the '572 patent were not docketed by the Firm as it was believed that the patent owner would tend to the docketing of these maintenance fees. (Kim Dec. para. 4).

The error relates to the misunderstanding as to the party who is to track the maintenance fee due dates. On the one hand, the Letter to Client recommended that the patent owner docket the due dates for the maintenance fee. On the other hand, the patent owner was under the belief that the Firm was tracking these due dates. The error therefore rests at least in part with the ambiguity in the Client Letter sent by Ms. Chung. This ambiguity represents an administrative oversight which led to the failure of the maintenance fees to be tracked (by either party), which led to the maintenance fees not being timely paid. Thus, the noted error resulted in the delay in timely payment of the subject maintenance fees of the '572 patent.

Regarding case law on this subject, Petitioner is aware of the axiom in which certain types of breakdowns in communication regarding the payment of maintenance fees is not considered to be grounds for granting a petition for late payment of a maintenance fee under the unavoidable standard. *See, e.g., Ray v. Lehman*, 55 F.3d 606, 609 (Fed. Cir. 1995). However, the instant matter is distinguishable from that case since in *Ray*, the "miscommunication" was actually a non-communication since the legal representative was not able to send the subject letter to the client. *Id.* at 607. In the instant matter, there was no such breakdown in communication since the patent owner did receive the Client Letter providing the due dates at issue. The issue here is not whether the patent owner received a communication (as in *Ray*), but

what was the content or impression that was conveyed to the patent owner. Accordingly, Petitioner submits that the holding in *Ray* is inapplicable to the instant matter.

(1) (B) Business routine

During the time period in question, the Firm had in place a business routine to perform payment of the maintenance fees for issued patents, including the '572 (which had the extended due date of June 29, 2008). More specifically, during the time period between 2004 and October 2006, the procedure in place to ensure timely payment of maintenance fees of the subject '572 patent was to report the requirement for maintenance fee payment to the patent owner. This procedure had the further step in which when the patent owner specifically makes a request for payment of the maintenance fee, the Firm would tend to the payment of the maintenance fees upon receiving such direction.

This business routine, which was in place prior to January 2009, is further described by Ms. Kim in her declaration. In particular, Ms. Kim elaborated that the Firm had a business routine for docketing and paying maintenance fees of patents that included reporting to the patent owner that maintenance fee payments for an issued patent were necessary. (Kim Dec. para. 4). Ms. Kim reiterated the point that as the maintenance fees become due, if the Firm received specific direction from the patent owner, payment of the maintenance fees would therefore be timely paid. *Id.* Ms. Kim added that after around January 2009, the Firm had the business routine of docketing maintenance fees of issued patents. (Kim Dec. para. 5).

(1) (C) Employee was sufficiently trained

Recall that Ms. Chung held the position of patent secretary from 2004-2006. Although Ms. Chung did not have significant prior experience as a patent secretary and docketing patent matters, she did receive initial and ongoing training by supervising attorneys and by the Office Manager Michelle Park. (Park Dec. para. 3). Ms. Chung's duties as patent secretary included filing applications and other prosecution related papers with the USPTO, docketing due dates, drafting client correspondence, and providing general secretarial support to several attorneys. (Park Dec. para. 3). To assure proper execution of assigned tasks, Ms. Chung was directly supervised by attorneys with whom she worked, and these attorneys reviewed her work product (e.g., PTO filings, client letters, etc.) to assure proper execution of her assigned tasks. (Park Dec.